

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) KENNETH TUROCZI and)
(2) TYRENE TUROCZI,)
)
Plaintiffs,)
)
v.) Case No. 5:23-cv-00095-JD
)
(1) THE TRAVELERS COMPANIES) <i>Removed from the District Court of</i>
INC., a/k/a TRAVELERS,) <i>Oklahoma County, Oklahoma</i>
) <i>Case No. CJ-2022-6227</i>
Defendant.)

JOINT STATUS REPORT RESPONDING TO COURT'S ORDER (DKT. # 10)

The Parties respectfully submit this Joint Status Report regarding their subsequent efforts and communications following the Court's Order (Dkt. # 10), issued on March 1, 2023. The categories and information detailed herein specifically address the topics listed by the Court in its Order, at pp. 3-4.

I. CONFERENCES AND DISCUSSIONS CONDUCTED BY THE PARTIES

A. FIRST MEETING - MARCH 2, 2023

The parties conducted their first meeting by telephone on March 2, 2023, following the issuance of the Court's Order on March 1, 2023. Attorney Gardenhire attended on behalf of Plaintiffs, and Attorneys Potts and Gage attended on behalf of Defendant. The conference was approximately 45 minutes in length.

Issues discussed/resolved: Attorney Gardenhire acknowledged issues raised in Court's Order regarding the procedural and substantive issues with Plaintiff's Petition (Dkt. # 1-2) and Plaintiffs' Response to Defendant's Motion to Dismiss (Dkt. # 7) (now

stricken). The parties agreed that the proper name of Defendant is Travelers Commercial Insurance Company and that Mrs. Turoczi's first name was misspelled on the original Petition (Dkt. # 1-1). Attorney Gardenhire confirmed the date of loss as December 23, 2018, and that the actions complained-of by Plaintiffs occurred in 2019. Defendant's counsel also discussed Plaintiffs' reference seeking leave to amend their Petition in Plaintiffs' Response to Motion to Dismiss (Dkt. # 7) so that Plaintiffs could include a breach of contract claim in addition to the bad faith claim. Defendant's counsel inquired as to Plaintiffs' theories underlying that claim and Plaintiffs' counsel advised that their breach-of-contract theories were those raised in the Response, namely, the Unfair Claim Settlement Practices Act, 36 O.S. § 1205.1, *et seq.*, and that the policy is an unlawful contract under 15 O.S. § 211. Plaintiffs' counsel advised that he intended to plead additional factual allegations occurring in 2019 and regarding the 2019 claims investigation and a discussion was then had as to whether those allegations satisfied Rule 11 (b). The issues raised in Defendant's Motion to Dismiss (Dkt. # 5) were also discussed, specifically, Defendant's arguments as to the application of the statutes of limitations to Plaintiffs' claims, and Defendant's counsel advised that based upon the matters discussed, Defendant still maintained its objections and arguments raised in the Motion to Dismiss and that Plaintiffs would likely need to seek leave to amend, as contemplated in the Court's Order. It was then agreed that Plaintiffs would prepare and circulate a proposed amended pleading for Defendant to review so that more meaningful discussions could be had afterwards. The parties also agreed that in the proposed amended pleading, Plaintiffs would correct the typos, misstated dates, and scrivener's errors contained within the existing Petition and

Plaintiffs would also correct the names of Defendant and Mrs. Turoczi. It was also agreed that Plaintiffs' counsel would send the proposed amended pleading to Defendant's counsel via email in a finalized format with referenced exhibits. Plaintiffs' counsel agreed to do so no later than by March 13, 2023, pursuant to the Court's Order.

B. SECOND CONFERENCE – MARCH 6, 2023

The parties conducted a second telephone conference on March 6, 2023, with Attorney Gardenhire attending on behalf of Plaintiffs, and Attorneys Potts and Gage participating for Defendant. The conference was approximately 30 minutes in length.

Issues discussed/resolved: Attorney Gardenhire advised that he was going to send a revised/corrected version of Plaintiffs' Response to Motion to Dismiss (Dkt. # 7); Defendant's counsel advised that was not necessary since the Response had been stricken and Plaintiffs were going to circulate a proposed amended pleading for review, in keeping with the parties' March 2 meeting and the Court's Order. Plaintiffs' counsel described the exhibits he had intended to include with the Response and also described the exhibits he intended to include with the proposed amended pleading. Plaintiff's counsel again reiterated that Plaintiffs' breach of contract claim was premised on the Unfair Claims Settlement Practices Act, as discussed during the March 2 conference. Plaintiffs' counsel also advised that he was substantively retired from practice and that he was intending to withdraw from the case due to some existing health issues; the parties then discussed that Attorney Gardenhire would remain in the case until the requirements of the Court's Order had been satisfied. It was again agreed that Plaintiffs' counsel would provide the proposed

amended pleading for Defendant's review no later than by March 13, 2023, pursuant to the Court's Order.

C. PROPOSED AMENDED PLEADING CIRCULATED TO DEFENDANT'S COUNSEL AND THIRD CONFERENCE – MARCH 14, 2023

The parties continued to exchange emails after the March 6 telephone conference and in the late evening on March 13, 2023, Plaintiffs' counsel emailed Defendant's counsel a PDF containing Plaintiffs' proposed amended pleading as discussed during earlier meetings. In the morning on March 14, 2023, Plaintiffs' counsel then sent several photographs via email constituting the exhibits to be included in the proposed amended pleading. Following Defendant's counsel's substantive review of those materials, the parties then conducted another meeting by telephone in the afternoon on March 14, 2023, to further discuss Defendant's objections. Attorney Gardenhire attended this third conference on behalf of Plaintiffs, Attorneys Potts and Gage participated for Defendant, and the meeting was approximately 55 minutes in length.

Issues discussed/resolved: The parties discussed that Plaintiffs had corrected the names of Defendant and Mrs. Turoczi, that the proposed pleading was mostly free of scrivener's errors, and that Plaintiffs had included a new cause of action for breach of contract. Defendant's counsel also advised that Plaintiffs' revised factual allegations had not resolved many of the substantive issues raised in Defendant's Motion to Dismiss (Dkt. # 5) regarding the applicable statutes of limitations. The parties' counsel also discussed Defendant's concern that in the proposed amended pleading, Plaintiffs had newly alleged that Defendant had required that all correspondence only be sent via email during the 2018-

2019 claims process. Plaintiffs' counsel stated advised that was not what he had intended to allege and indicated that would be corrected. Counsel also discussed that Plaintiffs would remove a request/motion for remand that Plaintiffs had included in the proposed amended pleading. As Defendant still had substantive objections to Plaintiff's causes of actions based upon the statutes of limitations and issues raised in its Motion to Dismiss, it was then agreed that Plaintiffs would move for leave to amend to file the proposed amended pleading that was circulated (with corrections as discussed above) and in accordance with the schedule stated in the Court's Order.

II. RECAP OF ISSUES

A. ISSUES RESOLVED BY THE PARTIES

1. Plaintiffs will not renew their Response to Defendant's Motion to Dismiss (Dkt. # 7) and will instead move for leave to amend their original Petition (Dkt. # 1-2) by March 20, 2023, as required by the Court's Order. The proposed amended pleading to be submitted with the Motion for Leave to Amend will be substantively similar to the draft circulated to Defendant's counsel on March 13, 2023, except for those corrections noted in Sec. I (C) above. Defendant will file its Response and Objections to Plaintiff's Motion for Leave to Amend within 14 days of Plaintiffs filing their Motion for Leave to Amend to address the unresolved issues identified in Sec. II (B) below.

2. The proper defendant for this lawsuit is Travelers Commercial Insurance Company and Mrs. Turoczi's first name is Tyrene; Plaintiffs have corrected these issues in their proposed amended pleading.

3. The date of loss for Plaintiffs' house fire is December 23, 2018; a claim was

made by the Turoczis on that date through the policy with Travelers and the claims process for this loss occurred in 2019. In June 2020, Plaintiffs sold the home where the 2018 loss occurred.

4. The insurance policy at issue is the policy included as Exhibit 1 to Defendant's Motion to Dismiss (Dkt. # 5-1).

5. Plaintiffs' proposed amended pleading contains a breach of contract claim, premised on the Unfair Claims Settlement Practices Act and 15 O.S. § 211.

6. Plaintiffs will not include a request/motion for remand in their proposed amended pleading.

B. ISSUES REMAINING

1. Defendant contends that the revised factual allegations in Plaintiffs' proposed amended pleading demonstrate that Plaintiffs' claims remain time-barred and that amendment would be futile. Plaintiffs disagree.

2. Defendant contends that Plaintiffs' breach of contract claim cannot be based upon the Unfair Claims Settlement Practices Act, and that Plaintiffs cannot simultaneously argue that the policy contract is void under 15 O.S. § 211 while also relying on the policy as the basis for Plaintiffs' bad faith claim against Travelers. Plaintiffs disagree.

Respectfully submitted,

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